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THE THOMAS KINKADE COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION – E-FILING

DAVID KAYNE, an individual citizen  
of Georgia,

Plaintiff,

vs.

THE THOMAS KINKADE COMPANY,  
formerly known as MEDIA ARTS  
GROUP, INC., a Delaware Corporation,

Defendant.

Case No. C 07-4721 SI  
Related Case: C 04-00186 SI

STIPULATION AND [PROPOSED]  
ORDER ~~RE~~ WITHDRAWAL OF  
PLAINTIFF'S MOTION FOR TRO AS  
MOOT

Hearing Date: November 1, 2007  
Hearing Time: 9:00 a.m.  
Courtroom: 10, 19<sup>th</sup> Floor

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1 WHEREAS, on October 2, 2007, when this matter was before Judge Fogel,  
2 Plaintiff David Kayne ("Plaintiff" or "Mr. Kayne") filed a motion seeking a  
3 temporary restraining order and preliminary injunction to enjoin defendant The  
4 Thomas Kinkade Company ("TKC") from proceeding further with an arbitration  
5 scheduled to occur on October 16, 2007; and

6 WHEREAS, on October 3, 2007, TKC filed an opposition to Mr. Kayne's  
7 motion seeking to enjoin TKC's participation in the October 16 arbitration  
8 proceedings; and

9 WHEREAS, on October 4-5, 2007, Mr. Kayne filed a reply in support of his  
10 motion seeking to enjoin TKC's participation in the October 16 arbitration  
11 proceedings; and

12 WHEREAS, Mr. Kayne's motion to enjoin TKC's participation in the October  
13 16 arbitration proceedings was taken under submission by Judge Fogel but not  
14 ruled upon; and

15 WHEREAS, in the absence of any order from this Court, TKC did participate  
16 in the October 16 arbitration proceedings; and

17 WHEREAS, the parties are in agreement that Mr. Kayne's motion seeking to  
18 enjoin TKC from participating in the October 16 arbitration proceedings is now  
19 MOOT;

20 NOW, THEREFORE, it is hereby stipulated as follows by and between Mr.  
21 Kayne and TKC through their respective undersigned counsel:

22 1. The motion of Mr. Kayne seeking a temporary restraining order and/or  
23 preliminary injunction to prevent TKC from participating in the October 16, 2007  
24 arbitration proceedings is now MOOT; and

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26 //

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2. In the circumstances, the motion by Mr. Kayne may be WITHDRAWN;  
and

3. The November 1, 2007 hearing date for Mr. Kayne's motion should be  
VACATED.

Dated: October 26, 2007

Respectfully submitted,

HOLLAND & KNIGHT LLP

McDERMOTT WILL & EMERY LLP



By: Charles L. Coleman, III

By: Charles E. Weir

Attorneys for Plaintiff  
DAVID KAYNE

Attorneys for Defendant  
THE THOMAS KINKADE COMPANY

Based on the foregoing stipulation of the parties, and good cause appearing,  
the November 1, 2007, hearing date on Mr. Kayne's motion for a temporary  
restraining order and/or preliminary injunction is hereby VACATED and his motion  
shall be deemed MOOT.

IT IS SO ORDERED.

Dated: October \_\_, 2007



SUSAN ILLSTON  
UNITED STATES DISTRICT JUDGE